

Internal Revenue Service

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Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-155191-07

Date:

October 22, 2008

X =

State =

A =

B =

C =

E =

F =

G =

Trust1 =

Trust2 =

Trust3

D1 =

D2 =

D3 =

Dear

This responds to a letter dated December 11, 2007, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting invalid election relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 and intended to elect to be an S corporation effective D2. X was created for the purpose of acquiring and holding the stock of A and B. On D2, stockholders of A contributed their A shares in exchange for the stock of X and the stockholders of B contributed their B shares in exchange for the stock of X. The A stockholders were C, Trust1, Trust2, and Trust3. The B stockholders were E, F, and G. In addition, C, E and F contributed cash to X in exchange for X stock. After the exchange of stock, shareholders of X included C, Trust1, Trust2, Trust3, E, F, and G.

X represents that Trust1, Trust2, and Trust3 (collectively, the Trusts) have met the qualified subchapter S trust (QSST) requirements described in § 1361(d)(3) from D2. However, the beneficiaries of Trust1, Trust2, and Trust3 inadvertently failed to timely make QSST elections. Therefore, X's S election on D2 was invalid because the Trusts were ineligible shareholders. The trustees, not the beneficiaries, of Trust1, Trust2, and Trust3 consented to the Form 2553, Election by a Small Business Corporation, for the Trusts. Consequently, Trust1, Trust2, and Trust3 did not properly consent to X's election to be an S corporation. The failure of the Trusts' beneficiaries to properly consent to X's election would have also made the election invalid on D2 under § 1362(a)(2). In addition, the Form 2553 contained several clerical errors. X elected to have A and B treated as qualified subchapter S subsidiaries described in §1362(b)(3)(B) but these elections also included clerical errors.

On D3, all of the issued and outstanding stock of X was purchased by a corporation. The parties agreed that the transaction would be treated as an acquisition of assets under § 338(h)(10).

X represents that the circumstances resulting in the invalidity of X's S corporation election were inadvertent and not motivated by tax avoidance. X further represents that from D2 to D3, X and its shareholders have filed all returns consistent with X's status as an S corporation. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election was ineffective for the taxable year beginning D2 because the failure of the Trust1 beneficiary, the Trust2 beneficiary, and the Trust3 beneficiary to make the QSST elections and to consent on behalf of each Trust to X's election to be an S corporation. We further conclude that the ineffectiveness of X's S corporation election constituted an inadvertent invalid election within the meaning of § 1362(f). Accordingly, pursuant to the provisions of 1362(f), X will be treated as an S corporation from D2 to D3, provided X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d). We also conclude that the clerical errors on Form 2553 did not cause the election to be invalid. In addition, the X election to have A and B treated as qualified subchapter S subsidiaries described in § 1362(b)(3)(B) will be treated as effective on D2 despite its clerical errors.

This ruling is contingent upon the Trust1, Trust2, and Trust3 beneficiaries filing QSST elections for the Trusts, with an effective date of D2, with the appropriate service center within 60 days of the date of this ruling. A copy of this letter should be attached to each QSST election. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust1, Trust2, and Trust3 qualify as QSSTs.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: